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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,151	04/09/2001	Alan Young	47185-95330	8242

7590 03/31/2005

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EXAMINER

NGUYEN, TAN D

ART UNIT PAPER NUMBER

3629

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 09/829,151	Applicant(s) YOUNG, ALAN	
	Examiner Tan Dean D. Nguyen	Art Unit 3629	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-7, 9 and 10.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
1) Arguments with respect to 101 Rejections are not persuasive and integration with computing means, computer, computer network to determine an output result is necessary to overcome this rejection. See again page 3 of the Final Rejection.
2) Arguments with respect to the 112, 2nd par, rejections of all outstanding claims 1-7, 9 and 10 are not persuasive. It's still not clear what the scope of the claimed invention, the preamble calls for "reporting a key performance indicator" but the last 2 steps call for "determine the value" and "displaying the determined value". Therefore, the scope appears to be dealt with "displaying the value of the key performance indicator. Moreover, it's not clear the relationship of "message" and "occurrence" in the middle step to the last 2 steps of the claim 1. Elements of method claim must show some kind of inter-relationship to complete the scope of the claim. If they are not needed in the claim, they should be taken out and not hanging loosely in the body without any connection.
3) Arguments with respect to the 103 rejections of Apparatus Claims 9 and 10 over Calver are not persuasive because disclose the computer processor (server) with memory connected to the processor to receive business dat, determine their value and reporting back to the user or displaying to the user on an Interface with answers or solutions. Applying the same principles to a similar business issues/data would have been obvious to a skilled artisan, absent evidence of unexpected results. No unexpected results have been shown. Moreover, for an Apparatus claim, only structural elements/features carry patentable weight. Apparatus claims cover what a device is, not what a device does. See Hewlett-Packard Co. v. Bausch & Lomb, Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528. Manner or operating the device does not differentiate apparatus claim from the prior art. Also, the intended use of the apparatus carry no patentable weight. See MPEP 2114. Note also that the workflow manager, as shown in claim 9, has no elemental structures except for the intended functions "receiving ... outputting".
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

Continuation Sheet (PTOL-303)

Application No.
Tan Dean D. Nguyen
Primary Examiner
Art Unit: 3629



U.S. Patent and Trademark Office
PTOL-303 (Rev. 9-04)

Advisory Action Before the Filing of an Appeal Brief

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